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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,332	09/30/2003	Donald E. Weder	8403.998	5316

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EXAMINER
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PALO, FRANCIS T

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/675,332

Applicant(s)

WEDER, DONALD E.

Examiner

Francis T. Palo

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 September 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/30/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Specification***

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

2. The disclosure is objected to because of the following informalities: paragraph [0001] should be updated to reflect the patent status of application 10/375,433. Appropriate correction is required.

### ***Claim Objections***

3. Claim-5 is objected to because of the following informalities: in the second line of the claim, "positioned a portion" should be --positioned about a portion--.

Appropriate correction is required.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. **Claims 1-48** are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over **claims 2-9,16 24, 31 and 39** of U.S. Patent No. 6,662,498.

Although the conflicting claims are not identical, they are not patentably distinct from each other because: the decorative assemblies comprising a floral holding material and their methods of forming as cited in the instant independent claims 1,16,29 and 40, are encompassed by the decorative assemblies comprising a shape sustaining floral holding material and their methods of forming as recited in the conflicting '498 independent claims 24,9,31 and 39 respectively.

Furthermore, the instant dependent claims are recited in the conflicting '498 dependent and independent claims.

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Specifically, the assembly features and limitations as cited in the instant independent claim-1 and dependent claims 15 and 28 are fully recited in the encompassing conflicting '498 independent claim-24, the assembly features and limitations as cited in the instant independent claim-16 are fully recited in the encompassing conflicting '498 independent claim-9, the assembly features and limitations as cited in the instant independent claim-29 are fully recited in the encompassing conflicting '498 independent claim-31, and the assembly features and limitations as cited in the instant independent claim-40 are fully recited in the encompassing conflicting '498 independent claim-39.

Regarding the instant dependent claims **3,7,18,22,31 and 42**:

The subject matter of the instant dependent claims is recited in the conflicting '498 independent claims 9,24,31 and 39 in the paragraphs beginning with "positioning the band".

Regarding the instant dependent claims **2 and 17**:

The subject matter of the instant dependent claims is recited in the conflicting '498 dependent claim-2.

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Regarding the instant dependent claims **4 and 19**:

The subject matter of the instant dependent claims is recited in the conflicting '498 dependent claim-3.

Regarding the instant dependent claims **5 and 20**:

The subject matter of the instant dependent claims is encompassed by the conflicting '498 independent claims as recited in the conflicting independent claims in the paragraphs beginning with "positioning the band".

Regarding the instant dependent claims **6,21,30 and 41**:

The subject matter of the instant dependent claims is recited in the conflicting '498 dependent claim-4.

Regarding the instant dependent claims **8,23,32 and 43**:

The subject matter of the instant dependent claims is recited in the conflicting '498 dependent claim-5.

Regarding the instant dependent claims **9,24,33 and 44**:

The subject matter of the instant dependent claims is encompassed by the conflicting '498 independent claims as recited in the conflicting independent claims in the paragraphs beginning with "positioning the band".

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Regarding the instant dependent claims **10,25,34,36,45 and 47**:

The subject matter of the instant dependent claims is recited in the conflicting '498 dependent claim-6.

Regarding the instant dependent claims **11,26,35,37,46 and 48**:

The subject matter of the instant dependent claims is recited in the conflicting '498 dependent claim-7.

Regarding the instant dependent claims **12,13,38 and 39**:

The subject matter of the instant dependent claims is encompassed by the conflicting '498 dependent claim-8.

Regarding the instant dependent claims **14 and 27**:

The subject matter of the instant dependent claims is recited in the conflicting '498 independent claim-16 in the paragraph beginning with "providing a forming device".

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 703-305-5595. The examiner can normally be reached on T-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles T. Jordan can be reached on 703-306-4159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Francis T. Palo  
Examiner  
Art Unit 3644

FP